

**IN THE COURT OF THE MUNSIFF ATTINGAL.
PRESENT:SRI. SANTHOSH KUMAR.N, MUNSIFF
FRIDAY 4th NOVEMBER 2022/ 13th KARTHIKA 1944**

IA 01/2022 in OS.489/2022

Petitioner/ Plaintiff:-

Dr.Sureshkumar, aged 58 years, S/o Viswanathan,
residing at Thoppuvila Veedu, Kudavoor P.O, Keezhthonnakkal Village,
Thiruvananthapuram District.

By Adv. Sri. Mangalapuram.S.Shibu

Counter Petitioner/ Defendant:-

The president, Thonnakkal Service Co-operative Bank Ltd, No.1754 at
Mangalapuram Branch, Thonnakkal P.O, Melthonnakkal Village,
Thiruvananthapuram Taluk, Thiruvananthapuram District

By Adv. Sri. Thonnakkal.G.Rajeev

This Petition having been finally heard on 26.10.2022 and the court on
04.11.2022 passed the following.

ORDER

The petition filed under order 39 Rule 1 and 2 of CPC.

2. The petitioner is the plaintiff in the original suit. The original suit is
filed for permanent prohibitory injunction.

3. **The averments in the petition in brief are as follows:** Plaintiff schedule
property belongs to the petitioner/ plaintiff by virtue of sale deed No.3478/2005
of SRO, Pothencode. It is having 7 ares 44 sq. mtrs comprised in re-survey
No.496/6-2 of Melthonnakkal village. Plaintiff, on obtaining the plaintiff schedule

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property, effected mutation and paying tax. The plaint schedule property is demarcated from adjacent properties with well defined boundaries on all sides. Nobody other than the plaintiff has any manner over the plaint schedule property.

4. The defendant is the president of Thonnakkal Service Co-operative Society having head office at Kudavoor and branch at Mangalapuram. Defendant's property situate immediately west of the plaint schedule property. Further west is the National Highway. Recently the western portion of the defendant's property including the building therein was acquired by the National Highway authorities as part of the widening of National Highway. Defendant thereafter lost their existing facilities. Now the defendant is proposing to extent the rear portion of the building in the east by constructing a new room illegally. They did not obtain permit from the local authority and has not left required set back. The construction is overlapping into the plaint schedule property at its western portion. Ground work has already been started. The intention of the defendant is to grab some portion of the plaint schedule property and convert the same as part of their property.

5. The western demarcating boundary wall of the plaint schedule property

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is aged more than 15 years. Defendants have no any right or authority to do harm or to raise any claim over the plaint schedule property and its boundaries. On 08.10.2022 the defendant and his men made an abortive attempt to trespass into the plaint schedule property and to destroy the western boundary for the construction of the foundation near to the western boundary of the plaint schedule property. But it was unsuccessful due to the intervention of the plaintiff and locals. Again on 12.10.2022 defendant attempted to trespass into the plaint schedule property and dumped materials with a view to construct basement illegally without leaving required set back and also by demolishing the existing boundary in the west of the plaint schedule property. This time also the object could not be materialized due to the timely intervention of the plaintiff and other locals. Though they withdrew from their attempt the petitioner/ plaintiff apprehends their trespass upon the plaint schedule property. Hence this petition.

6. **Respondent/ defendant filed objection contending as follows:** The petition is not maintainable either in law or on facts. The averments in the petition are denied. Petitioner has not arrayed the secretary of the society as a party to the petition since the society is being represented by its secretary.

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Plaintiff has not scheduled the respondent's property. Plaintiff has suppressed material facts. They approached the court with unclean hands. So they are not entitled to get any relief as prayed for.

7. It is admitted that plaintiff has some property on the immediate east of defendant's property. The contentions that the plaintiff schedule property is demarcated with well defined boundaries on all sides is false. It is admitted that there is a wall on the immediate east of this defendant's property. Though in physical appearance it would appear that the eastern wall in the western boundary of plaintiff schedule property, the actual boundary line separating the plaintiff schedule property from the defendant's property is not the existing wall. As per side measurement provided in the schedule description of the plaintiff schedule property it would reveal that the plaintiff's property does not touch the eastern wall of the defendant's property. The defendant is having 60 cm open space on the further east of the existing wall that can be seen at the spot. Hence the temporary arrangement made by the respondent/ defendant to conserve the remaining portion of his building including the strong room in no way violative of the provisions of Kerala Panchayath Building Rules.

8. It is true that a portion of defendant's property was acquired by

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National Highway authorities for widening of NH 66. Defendant is having the property and bank building ad-measuring an extent of 01.01 ares comprised in survey No.496/6-5 of Melthonnakkal village. Government acquired 0.77 ares and portion of the building on the west. Thus defendant is having just 0.24 ares with remaining portion of the building structure which includes strong room of the bank. Defendant has made arrangements to conserve the remaining building structure by doing temporary arrangements by erecting GI sheet structure on its eastern side. The allegation that on 08.10.2022 the defendant made attempts to construct foundation near to the western boundary of the plaint schedule property is absolutely false and hence denied. The suit and IA is instituted in furtherance of the frustration caused to the plaintiff who wants to acquire the remaining property of the defendant for having direct access to the NH 66. The petitioner/ plaintiff approached the defendant directly and indirectly to leave remaining property. Hence the intention behind the petition is for making unjust enrichment of the petitioner. Petition is liable to be dismissed.

9. Based on the above averments the following points were raised for consideration.

1. Whether the petitioner is entitled to get an order as prayed for ?

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2. What is the order as to costs ?

10. Evidence in this petition consists of Ext.A1 to A3 and Ext.C1 and C1(a). Ext.A1 is the original title deed in respect of the plaint schedule property. Ext.A2 and A3 are the tax receipts showing remittance of tax in respect of plaint schedule property. Ext.C1 and C1(a) are report and rough sketch prepared by the urgent commissioner.

11. Heard

12. **Point No.(1):** Admittedly, defendant's property situates immediate west of the plaint schedule property. Further west of the defendant's property is NH 66. Admittedly NH authorities have acquired certain extent of the defendant's property as part of widening of NH 66. It is not in dispute that the portion of the defendant's building has been demolished. It is further not in dispute that the defendant is making certain construction on the east of the bank building subsequent to the demolition of the western part of the building. It is the version of the respondent/ defendant that the arrangements is for preserving the remaining portion of the existing building including the strong room of the bank. It is not in dispute that the alleged construction is close to the eastern wall of the defendant's property. The plaintiff has averred in the petition that the

western boundary wall of the A schedule property was constructed 15 years ago. It is to be noted that defendant has not disputed this. Defendant has claimed that though the eastern wall will appear as a boundary to their property, in fact it would extent 60 cm further east. So from this claim it would reveal that the defendant is raising a claim over a portion of the property lying further east of the western boundary of plaint A schedule property. The claim of the defendant is based on the side measurement in the schedule item property.

13. Advocate commissioner who inspected the plaint schedule property immediately after the institution of the suit has furnished report and rough sketch. Advocate commissioner has specifically stated that the plaint schedule property is demarcated from all the adjacent properties with walls on all sides. The commissioner has further noted a basement and two layers of concrete blocks thereon which looked recently constructed and two iron pipes erected on the north and south with and a roofing thereon with GI sheet. The commissioner has also noted two shutters being erected at the west of the demolished part of the building and enclosing the southern and northern walls with concrete blocks. The commissioner has noted that the construction is very recent. From the eye sketch it is evident that the newly constructed room is shown as C plot in the

rough sketch. The distance between western boundary of A schedule property and new room is just 1 feet.

14. At the bar, learned counsel for the respondent/ defendant submitted that no permit for the alleged construction has been obtained the local self institution. Ext.C1 and C1(a) report and eye sketch would also show that the new construction in the defendant's property is without leaving the required set back area as per the Kerala Panchayath Building Rules. The defendant claims a portion of the property beyond the eastern wall basing on the side measurements in the plaint schedule item. Prima facie the boundary wall in the east of the defendant's property and west of the plaint schedule property would show as the demarcating boundary of plaint A schedule property and defendant's property. Commissioner has shown certain projection of GI roofing to the plaint A schedule property. Whether the defendant has right over certain extent of property beyond the eastern old wall or whether the present wall on the west of the property is the boundary separating plaint schedule property and property of the defendant are to be adjudicated on merits after adducing evidence by the parties. At present it is to be presumed that this is the western boundary of plaint schedule property. It is pertinent to note that the respondent/ defendant has not

raised such a claim prior to the acquisition of land by Government. This claim is raised when the space available to the respondent/ defendant bank was reduced to just 24 sq.mtrs. From the facts and circumstances and materials on record prima facie it is proved that there is a possible trespass upon the plaint schedule property and petitioner is entitled for the interim relief as prayed for. The defendant is a co-operative bank having several branches. The acquisition proceedings might have been started several months ago. They could have taken necessary steps for shifting the strong room or other facilities attached to the bank for which the petitioner can't be made to suffer. Hence balance of convenience also favours petitioner. If the petition is not allowed, hardship would cause to the petitioner. In the light of the above discussion point No.(1) is found in favour of the petitioner.

15. **Point No.(2):** In the result, petition stands allowed.

Defendant and his men are hereby restrained from constructing anything in their property without leaving sufficient setback area from the plaint schedule property or from trespassing into the plaint schedule property or from creating any disturbance or nuisance to the peaceful possession and enjoyment of the

plaintiff over the plaint schedule property.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 04th day of November, 2022.

Sd/
SANTHOSH KUMAR.N
MUNSIFF

Appendix:-

Exhibits for the Petitioner/ Plaintiff:-

A1	28.09.2005	Original Sale deed No. 3478/2005 of SRO, Pothencode
A2	13.04.2022	Tax receipt No.KL-0101011302685/2022 issued from Melthonnakkal Village Office.
A3	15.10.2022	Receipt of complaint submitted to local Authority

Exhibits marked for the Counter Petitioner/ Defendant:- Nil

Court Exhibits:-

C1 and C1(a)	19.10.2022	Commission report and rough sketch prepared by Adv. Smt.Anakha.V
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Witness for both sides:- Nil

Id/-
MUNSIFF

// True copy//

Typed by: Sheena.K

Compared by: sb

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